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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963.

No. 469

ALTHIMUS SIGUE,

Petitioner

VS.

TEXAS GAS TRANSMISSION CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

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INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	4
STATEMENT OF THE CASE	4
REASON FOR GRANTING THE WRIT	11
ARGUMENT	12
CERTIFICATE OF SERVICE	19
OPINION OF COURT OF APPEAL, THIRD CIRCUIT, STATE OF LOUISIANA, *ALTHIMUS SIGUE V. TEXAS GAS TRANSMISSION CORPORATION* (APPENDIX 1)	21
OPINION OF COURT OF APPEAL, THIRD CIRCUIT, STATE OF LOUISIANA, *TEXAS GAS TRANSMISSION CORPORATION V. ATHIMUS SIGUE* (APPENDIX 2)	29
LOUISIANA LAWS APPLICABLE (APPENDIX 3)	37
PETITION IN UNITED STATES DISTRICT COURT, *TEXAS GAS TRANSMISSION CORPORATION V. SIGUE* (APPENDIX 4)	45

AUTHORITIES CITED

	Page
Commissioners vs. St. Louis Southwestern Ry. Co., 257 U. S. 547 42 S. Ct. 250	16
Feibelman vs. Packard, 109 U. S. 421, 3 S. Ct. 289	16
Gregory vs. Hartley, 113 U. S. 742, 5 S. Ct. 743	15
Louisiana Highway Commission vs. Israel, 205 La. 669, 17 So.2d 914	17
Mapp vs. Ohio, 367 U. S. 643, 81 S. Ct. 1884	14
Marcel J. Cousin vs. H. B. Hornsby, et al, Miners Savings Bank vs. United States, 63 F. Supp. 305	15
Robinson vs. California, 370 U. S. 660, 82 S. Ct. 1417	14
Tolmas, Inc. vs. Police Jury, 231 La. 1, 90 So.2d 65	12
Wolf vs. Colorado, 338 U. S. 25, 69 S. Ct. 1359	12

CONSTITUTIONS AND STATUTES

United States Constitution, Fifth Amendment	2, 48
United States Constitution, Seventh Amendment	2, 3, 14, 48
United States Constitution, Fourteenth Amendment	2, 3, 14, 15, 48
Louisiana Civil Code, Article 13	32

CONSTITUTIONS AND STATUTES—*(Continued)*

	Page
Louisiana Civil Code, Article 753	25
Louisiana Civil Code, Article 1949	24
Louisiana Civil Code, Article 1956	25
LSA — R. S. 19:1	12
LSA — R. S. 19:4	3
LSA — R. S. 19:6	3
LSA — R. S. 19:7	3
28 U.S.C. § 1441	16
28 U.S.C. § 1257	2
Louisiana Constitution, Art. 1, Sec. 2	17
Louisiana Constitution, Art. 7, Sec. 41	3, 15

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To The Chief Justice of the United States and the Justices of the Supreme Court of the United States:

Petitioner respectfully prays that writ of certiorari issue to review the judgment of the Supreme Court of Louisiana (and, of necessity, the judgment of the Court of Appeal for the Third Circuit of Louisiana), entered on June 26, 1964, refusing writ of review to said Court of Appeal as to its judgment of April 21, and denial of rehearing on May 13, 1964.

Additionally, the earlier judgment of said Court of Appeal in this controversy, while not subject to review, is directly involved in any determination of the issues.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court states merely, "Writ refused. On the facts found by the Court of Appeal the result is correct." It bears the initials of six of the seven justices, and the further notation, "Summers, J., is of the opinion that the sum awarded for the property taken is inadequate."

The judgment of the Louisiana Court of Appeal (writ denied by Louisiana Supreme Court), of June 18, 1963, in the earlier aspect of this controversy, is reproduced as Appendix 1.

The judgment of said Court of Appeal which is the real basis of this application is reproduced in Appendix 2.

The certificate of the Clerk of the Louisiana Supreme Court accompanies the duplicate original of the record being filed.

JURISDICTION

Dates of judgments are stated above. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3), and the Fifth, Seventh and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED

1. Are the standards of the due process and equal protection secured by the Fourteenth Amendment and the Fifth and Seventh Amendments operating through the

Fourteenth Amendment violated by the provisions of Louisiana Revised Statutes, Title 19, Section 4, providing "all expropriation cases shall be tried before the Court without a jury," especially in view of the provisions of Louisiana Constitution, Article 7, Section 41, and Louisiana Code of Civil Procedure, Article 1731, securing to all citizens in civil suits right to trial by jury?

2. Has petitioner been unconstitutionally deprived of his property rights in, under and to a final unappealable judgment, and deprived of due process, when the procedure against him is brought under Title 19, Louisiana Revised Statutes, which authorizes expropriation only of immovable property and servitudes?

3. Has petitioner been unconstitutionally deprived of his property, including a prior judgment in his favor, by the application of Louisiana Revised Statutes 19:6 and 7 (which provide that the landowner waives all defenses unless he files answer within 10 days of service), when he has timely removed the cause to a United States District Court, and files pleadings and answer promptly after remand, and well in advance of the date fixed for hearing?

4. Has petitioner been denied due process and equal justice by the refusal of the Louisiana courts to recognize in this case that Louisiana Code of Civil Procedure of 1960, which for the first time made exceptions available in all summary proceedings and which provides for discovery devices, including written interrogatories to parties, in all ordinary and summary proceedings, applies to and/or supplements or amends the procedural provisions of Title 19 of the Louisiana Revised Statutes of 1950?

5. Was petitioner denied due process and equal justice by the arbitrary denial of his counsel's motion for continuance, motion for trial by jury, exceptions and motion to dismiss, and by denying petitioner the right to defend against the taking and/or to have answers to his written interrogatories propounded to plaintiff?

6. Were the proceedings violative of the Louisiana constitutional provision that private property may not be taken without due process of law and that just compensation must be paid before the taking?

7. Does the judgment violate the Constitutions of Louisiana and the United States in ordering the taking of petitioner's property upon payment of $53.00, which is not just compensation?

STATUTES INVOLVED

Pertinent portions of the Louisiana Constitution, Revised Statutes and Code of Civil Procedure are reproduced in Appendix 3.

STATEMENT OF THE CASE

Petitioner, a gentleman of color, owns two tracts of land, several miles apart, in Iberia Parish, Louisiana, and this action was instituted against him by respondent, a gas transmission company, following an earlier final judgment in favor of petitioner in a suit in ejectment against said company.

Petitioner resided in New York in 1955, when he signed agreement by which respondent, a corporation, not domiciled or having principal office in Louisiana, might lay an underground pipe-line, for a distance of about 1100 feet across the property here in question. Subsequently, at respondent's request, he granted an easement on a tract 25 by 25 feet, on which respondent might erect an above-ground valve.

Thereafter, petitioner returned to live on his other land in Iberia Parish, and found that said valve was about 3 feet high, located about 200 feet from the paved highway on which the property fronted.

On March 22, 1962, the parties entered into an agreement permitting respondent to lay a second underground line, near and parallel to the first, and providing that off-right-of-way damages would be submitted to arbitration.

Some weeks later, respondent's agents sought an easement on 50 by 50 feet, to include the area in the earlier easement, in order to erect a second valve. Petitioner refused to grant such easement.

About August, 1962, respondent's agents came to petitioner's home, and told him they would soon be laying the line across petitioner's other tract, so he should not be disturbed if he saw people on his said land.

Toward the end of that month, he did see the line was being laid, and when the work had progressed across the length of his property, and to the highway, he went one day to see why it was continuing at that point, and dis-

covered that respondent had a large excavation and was installing a second valve. When he remonstrated, respondent's agents told him to go see a lawyer.

Within a week or so the installation was complete, leaving a second valve and two cross-over devices, the purpose of which was to permit the lines to be blown at that point. In fact, in the next year the lines were blown three times, releasing millions of cubic feet of gas each time into the atmosphere, accompanied by loud noise, alarming the many residents of the surrounding residential area and creating great peril for a distance of at least 700 feet.

Petitioner did employ counsel, who negotiated for several weeks with respondent's agents for the removal of the unauthorized installations, and for payment or submission to arbitration of the off-right-of-way damages. Respondent refused to discuss or arbitrate damages unless petitioner granted the easement for the latest valve and cross-over devices.

Petitioner then brought suit against respondent in the State court in Iberia Parish, asking for preference hearing of the injunctive request for ejectment, and for subsequent trial by jury on the question of damages.

The judicial district consists of three Parishes, with a judge from each, and the hearing on the injunction was conducted in New Iberia, but before the judge residing in Franklin, St. Mary Parish, about 40 miles away.

After hearing, the judge held that because respondent had legal status to bring expropriation proceedings, it had

a right to remain on the land without the necessity of expropriating.

Moreover, ignoring the demand for trial by jury on the question of damages, the court dismissed the entire suit, asserting that plaintiff should have sued for damages.

On appeal, the Court of Appeal likewise ignored the matter of damages and trial by jury on that issue, but reversed, ordering respondent to remove the 1962 installations within 90 days after the judgment became final. (See Appendix 1).

Rehearing was denied, and the Louisiana Supreme Court denied writ of review.

Disdaining to negotiate, and ignoring the judgment to vacate, respondent then filed summary proceedings to expropriate, under Title 19 of the Louisiana Revised Statutes of 1950.

Although respondent had counsel in New Iberia, and a District Judge lives there, and a second District Judge lives less than 15 miles away, the order fixing for hearing was taken about 40 miles, to be issued, ex parte, by the judge who had ruled against petitioner in the first case, and who now fixed date of hearing, before himself, in New Iberia, for November 26, 1963, which fell within a week he was not scheduled to sit in New Iberia.

Service was made on petitioner on October 25, 1963, and petitioner's counsel thereupon prepared petition and

bond for removal to the United States District Court for the Western District of Louisiana, Lafayette Division, and handed same to the deputy clerk of said court in Lafayette on November 5, 1963, having complied with all other requirements as to removal. (See Appendix 4).

Within the next two days, petitioner filed in said Federal Court a motion for summary judgment and/or to dismiss.

On November 7, 1963, counsel for respondent mailed to the Clerk a motion to remand.

On Wednesday, November 13, 1963, without affording petitioner's counsel reasonable opportunity to be heard, and in his absence, said Federal Court ordered the cause remanded. Notice was received by petitioner's counsel on Friday, November 15, 1963.

On that same day, petitioner's counsel appeared in open court in New Iberia and presented and filed an exception, a motion for trial by jury, and a motion for continuance. The presiding judge declined to consider these, as he was not to hear the case.

That afternoon petitioner's counsel mailed copies of these pleadings to the judge in Franklin, together with a letter explaining the binding nature of prior commitments preventing either member of the law firm representing petitioner from appearing on November 26, 1963, suggesting several other dates immediately thereafter, and saying he would appear in court in New Iberia on Monday, November 18, 1963, to take up his pleadings, but might be

slightly delayed because of earlier appearance in court in Vermilion Parish that morning.

On that same day, Friday, November 15, 1963, petitioner's counsel mailed to respondent's counsel a copy of his answer, resisting the taking, with annexed written interrogatories to respondent, many of these relating to facts known only to respondent, and necessary to enable an appraiser or expert to form opinion as to the damage to the remainder of petitioner's tract resulting from the taking.

On Monday, November 18, 1963, petitioner's counsel appeared at court in New Iberia, to be informed by the judge that he had denied petitioner's motions and that hearing would take place on November 26, 1963, but would be limited solely to damages, asserting that petitioner had lost all other rights by the removal.

Immediately thereafter, petitioner's counsel filed the answer and annexed interrogatories.

Petitioner applied to the Court of Appeal for writs, which were denied.

On November 21, 1963, petitioner filed peremptory exception which, under Louisiana law, may be filed at any time, even after trial.

On November 25, 1963, petitioner filed motion to dismiss, or to stay proceedings until the interrogatories were answered.

On the morning of November 26, 1963, one of the two members of the law firm representing petitioner (but not the one who had theretofore handled the matter in its entirety) compromised the case he had been scheduled to try that day in said Federal Court, and did appear to represent petitioner.

At the outset, he asked to take up petitioner's pleadings, and the Court over-ruled all, specifically holding that the peremptory exception was over-ruled because filed too late.

The Court then limited the hearing to the issue of damages, holding that all else had been waived. Although the evidence disclosed that the part of petitioner's property here affected, measuring 705 by 1100 feet, was virtually surrounded by residential buildings in a fast growing community, and had value of $2200.00 an acre for residential purposes (but only $450.00 an acre for agricultural purposes), the Court fixed damages at only $53.00 for the property actually taken, and declined to award anything for damages to the remainder of the tract.

On appeal, the Court of Appeal affirmed, implicitly over-ruling all constitutional questions raised by petitioner. Rehearing was denied.

Proper and timely application to the Louisiana Supreme Court for writ of review was denied, as aforesaid, on June 26, 1964, and petitioner gave notice to that court and to opposing counsel of intent to apply to this court for certiorari.

All Federal and constitutional questions were raised at the first opportunity. In addition to raising of the questions in the removal petition, the due process and other constitutional issues were raised in the exception which was the first pleading filed by petitioner in the Louisiana court, on November 15, 1963, and have been repeatedly and consistently urged and amplified at every stage since then, and specifically in the application to the Court of Appeal for writs, the appeal to said Court of Appeal, the application for rehearing, and the application to the Louisiana Supreme Court for writ of review.

Nevertheless, except by necessary implication, these questions have not been considered.

REASON FOR GRANTING THE WRIT

Private property has been taken by a private corporation, whose authority to take derives from Federal statute, the Federal Power Commission, and from Louisiana constitution and laws. This property has been taken under color of law, but without due process and just compensation, and the Louisiana courts have deprived petitioner of equal justice.

The state courts not only have taken his immovable property, but also have taken, without any compensation, petitioner's property right in the final judgment obtained by him.

Unless this court grants relief, agencies in Louisiana henceforth are free to take private property by force and without any compensation, placing upon the owner the

burden and expense of seeking a judgment which will, as a practical matter, then be worthless. The disparity in financial position will permit agencies such as respondent to acquire private property by economic coercion alone.

The judgments complained of authorize agencies to take private property without any court procedings or payment to the owner, inasmuch as they permit the agency to wait until long after the actual taking, and even after final judgment in favor of the owner, before it need seek to expropriate, and no penalty is imposed for the illegal taking, not even as to damages while the property continues to be illegally possessed.

These judgments adversely affect every landowner in Louisiana, and, unless changed, may affect present or future rights of every landowner in the nation.

ARGUMENT

The Constitution of Louisiana provides that private property can be taken only by due process, and only after just compensation has first been paid; taking even after due process but without first paying just compensation is null and void. *Tolmas, Inc. vs. Police Jury*, 231 La. 1, 90 So.2d 65.

Thus, one who has been finally adjudged a trespasser cannot continue in illegal possession while it then seeks to expropriate what it is illegally possessing.

Respondent here sought belatedly to expropriate by following procedures set out in Title 19 of the Louisiana Revised Statutes of 1950, but R.S. 19:1 defines property

subject to expropriation as "immovable property, including servitudes." Title 19 does not authorize the expropriation of the property right to eject a trespasser acquired by a final judgment.

The Louisiana Code of Civil Procedure of 1960 for the first time authorized the use of exceptions in summary as well as ordinary proceedings; a peremptory exception may be filed at any time, even after trial; if filed before trial it must be ruled upon before trial, and a ruling without hearing or argument does not constitute due process.

Declinatory and dilatory exceptions, which include the exception of prematurity, must be filed before answer, and must be ruled upon before trial. Due process requirements include the right of exceptor to be heard.

Louisiana discovery devices are available in summary as well as ordinary proceedings, and when a defendant propounds timely and proper interrogatories to a plaintiff, seeking information known exclusively to plaintiff but vital to defendant's case, a plaintiff may not ignore such interrogatories, and if the court forces defendant to trial without answers to his interrogatories, defendant has been deprived of due process and equal justice.

In ordinary expropriation proceedings counsel sought to be employed by the landowner may be required to decline employment if it is impossible for him to attend hearing as scheduled by the court, and prior commitments to a court of equal dignity may not entitle him to continuance if he accepts employment, but when the landowner has been represented, before the same judge and in the same controversy, for more than a year by counsel of his

own choice, it is an abuse of the court's discretion to fix date of hearing, ex parte, and to refuse to consider a request for continuance when counsel states willingness to proceed two or three days later, and when the adamant action of the court forces defendant to trial without representation or with counsel who has been unable to prepare, defendant has been deprived of due process and equal justice. This is particularly true when plaintiff has actual possession of the property and cannot be harmed by a two-day continuance.

Because of the circumstances of their adoption, the first 10 amendments to the United States Constitution are inseparable. Their guarantees were originally held to apply only to the Federal government, but since 1920 this court has repeatedly held that, by virtue of Amendment 14, these guarantees limit State action. *Wolf vs. Colorado*, 338 U. S. 25, 69 S. Ct. 1359; *Mapp vs. Ohio*, 367 U. S. 643, 81 S. Ct. 1884; *Robinson vs. California*, 370 U. S. 660, 82 S. Ct. 1417; and others.

True, the jury trial guarantee of Amendment 7 has not yet been held applicable to the States, but there is no valid basis for distinguishing this amendment from the others of the first eight.

A constitution which guarantees free speech can be and has been interpreted to apply only to speech not disagreeable to a nation's rulers. The right to be secure in one's person, even the ancient maxim that a man's house is his castle, which the rain and the wind may enter but the king may not, may be made to give way to supposed national security. We need remember only what happened

in the enlightened State of California in 1942 to Americans of Japanese descent.

So, while judges conscious of their infinite wisdom sometimes come to think ill of trial by jury, and even be willing to see it eroded, the people know that of all the rights contained in the Constitution, the right to trial by jury is the most precious.

If, as has been held by this Court, Amendment Fourteen extends the constitutional guarantees to the States, trial by jury must be included in this case, especially where it is extended to all other citizens in civil cases. Louisiana Constitution, Article 7, Section 41 and Louisiana Code of Civil Procedure, Article 1731.

The Louisiana statute which denies trial by jury, and the refusal of the Louisiana courts to grant petitioner's request for jury trial, are unconstitutional.

When service was made upon petitioner, he had 20 days in which to remove to Federal court, but the Louisiana statute required him to answer within 10 days or forfeit his right as to anything but compensation.

If he filed answer or any other pleading in the State court, he was foreclosed from removing. *Gregory v. Hartley*, 113 U. S. 742, 5 S. Ct. 743.

Once the case had been removed, nothing more could take place in the State court, and even a State court judgment against him would be null if he removed within 20 days. *Miners Savings Bank v. United States*, 63 F. Supp. 305.

Yet, until certain recent innovations by the Fifth Circuit in some cases, there was no doubt that he would have no right to appeal any remand, without regard to the legal incorrectness thereof.

Thus, petitioner was on the horns of a dilemma. While 28 U.S.C., Section 1441, apparently forbade removal, it had been held that an expropriation proceeding, being a direct invasion of private rights, is removable to a Federal court. *Commissioners v. St. Louis Southwestern Ry. Co.*, 257 U.S. 547, 42 S. Ct. 250.

Moreover, petitioner was asserting serious Federal questions, and a suit that cannot be prosecuted, defended or determined without resort to federal laws or the United States Constitution is a suit arising under the laws of the United States, so as to authorize removal to a United States District Court. *Feibelman vs. Packard*, 109 U. S. 421, 3 S. Ct. 289.

Even realizing there might be danger of remand, petitioner had his choice between removal and defending against expropriation before a judge who had previously held that respondent could take his property without expropriation.

Once he exercised his choice, and removed, he could file nothing in the State court. He promptly sought judgment in Federal court, but that court remanded.

Petitioner then moved immediately to file pleadings and answer in the State court, but that court overruled all, holding that even peremptory exception was filed too

late, as more than 10 days had elapsed since service, and ordered petitioner's property taken.

If Federal or State statutes or rules, or a combination thereof, can so operate and be applied under these circumstances as to compel a landowner to choose at his peril between defending his property before a judge who has already decided against him or seeking Federal protection before a judge who can remand without legal cause, and not subject to appeal, when such remand thereby destroys petitioner's right to defend his property, then said statutes, rules and judicial action are unconstitutional.

Finally, aside from the taking of petitioner's rights under judgment, which are not subject to expropriation, his property has been taken without just compensation.

The tract of about 64 arpents fronts on the paved highway for 705 feet, and is virtually surrounded by residential development. The trial court was compelled to find, because of the expert testimony from both sides, that the tract had immediate and best value for residential purposes, for which it was worth $2200 an acre, whereas for agricultural purposes it had value of only $450 an acre, a difference of $1,750 an acre.

On this basis, even the 50 by 50 foot area had value of $106, but plaintiff was awarded only $53, on contention of the court that the first valve had destroyed half the value. Nothing was awarded as to diminution of value of the remainder of the tract, which is contrary to *Louisiana Highway Commission vs. Israel*, 205 La. 669, 17 So.2d 914, and Art. 1, Section 2, Louisiana Constitution.

There was no evidence that the first valve was ever used to blow the line between 1955 and 1962. In fact, it appears that the very purpose of the 1962 valve and cross-over devices was to permit one line to be shut down, and to be blown.

Testimony from respondent's own agent was that the lines had been blown at this point three times during the year after the second valve was installed, that blowing of the first line through the first valve, had released about 13 million cubic feet of gas, but the blowing of the second valve released 23 million cubic feet of gas, with danger of explosion for some 700 feet. The evidence discloses that about 18 acres of petitioner's land cannot now be used for residential purposes.

The fact is that it is the presence of the second valve and cross-over devices alone that has destroyed the valve of the 18 acre portion for all but agricultural purposes, at a loss to petitioner of $1750 an acre or total of $31,500.00.

An award of only $53 clearly constitutes a taking of his property without just compensation.

Respectfully submitted,

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CERTIFICATE

Copies of the foregoing petition for certiorari have been mailed to Mr. Burt W. Sperry, Shotwell & Brown, 708 Ouachita Bank Building, Monroe, Louisiana, and Mr. Jack J. Cousin, 211 E. Main Street, New Iberia, Louisiana, counsel of record for respondent, and to Honorable Val J. Courville, Clerk, Louisiana Supreme Court, on September ....., 1964.

J. Minos Simon

APPENDIX 1

NUMBER 860

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

ALTHIMUS SIGUE Plaintiff & Appellant

VERSUS

TEXAS GAS TRANSMISSION CORPORATION Defendant & Appellee

Appeal from the Sixteenth Judicial District Court for the Parish of Iberia, the Honorable Rene H. Himel, District Judge presiding

Before Tate, Hood and Culpepper, Judges
Culpepper, Judge

The plaintiff landowner seeks an injunction against the continued occupation of his land by certain aboveground valves and connecting pipes constructed thereon by the defendant, Texas Gas Transmission Corporation. Plaintiff contends that the pipeline easement, which he granted to defendant, required that all pipelines, fittings and appliances be buried so that they would not interfere with cultivation of the land. On the other hand, it is the contention of defendant that said right of way agreement does permit the questioned aboveground installations as "necessary fittings and appliances" for the pipeline. In the alternative, defendant contends that the plaintiff

knowingly acquiesced in the installation of said aboveground installations and is therefore estopped to require the removal thereof and is relegated to a suit for compensation and damages. The district judge pretermitted the issue of whether the questioned installations were permitted by the right of way agreement and decided that, in any event, plaintiff was estopped to demand an injunction requiring their removal. Plaintiff appealed.

The facts show that plaintiff is the owner of a tract of land containing 64 arpents, more or less, used for agricultural purposes. In 1955, when defendant constructed its first pipeline across the property, it obtained from plaintiff a right of way agreement, with the provision that all pipelines would be buried beneath the surface of the land so as not to interfere with cultivation. Shortly after this 1955 agreement had been signed, the defendant obtained from plaintiff, for a consideration of $50, an additional easement covering a tract of land measuring 25′ by 25′ for the purpose of constructing an aboveground gate valve and appurtenances thereto, with the right to enclose this area by a fence.

On March 22, 1962, the defendant obtained from plaintiff a right of way agreement for a second pipeline, to be constructed parallel to the first. This agreement, like the first, granted defendant the right to construct a "pipeline (with necessary fittings and appliances) for the transportation of oil, gas, etc." The agreement also contained the provision that defendant "agrees to bury the pipeline so that it will not interfere with the cultivation of the land . . ." Then in either June or July of 1962 (defendant contends that it was during June but plaintiff testified it

was during July) the defendant advised plaintiff that it would be necessary to construct an aboveground gate valve on the second pipeline, adjacent to that on the first pipeline. Plaintiff testified that during the month of July, 1962 he was approached by the agents of the defendant with the request that he sign an additional easement covering an area 25′ by 25′ for the aboveground gate valve. No agreement could be reached and plaintiff refused to sign this additional easement for the valve.

Defendant then, taking the position that it already had the right to construct the aboveground gate valve, under its existing pipeline right of way agreement dated March 22, 1962, advised plaintiff on or about July 11, 1962 that the construction of the pipeline would begin within a few weeks. The evidence does not show that plaintiff was advised the aboveground gate valve would be constructed. Defendant's division manager, Mr. Taylor, testified that he instructed his land agents to tell the plaintiff they were going ahead with the construction of the pipeline and the aboveground valves. However, these land agents, who were the only ones who actually talked to plaintiff, would not say that they told plaintiff the aboveground valves would be constructed.

Actual construction began about August 1, 1962. Within a few days after the laying of the pipeline had started, plaintiff visited the property and saw the large holes which had been dug for the placement of the valves. Plaintiff testified that he immediately began to try to obtain an attorney to protect his rights as regards the installation of the aboveground gate valves without his consent

and that he contacted four different lawyers but none of them would handle his case. Construction of the pipeline and the valve was completed about August 23, 1962. Plaintiff employed his present attorneys about September 10, 1962 and they entered into negotiations to obtain the removal of the aboveground valves or compensation and damages therefor. No agreement could be reached and this suit was filed on October 23, 1962.

Defendant's first contention is that under the right of way agreement, dated March 22, 1962, it was granted the right to construct a pipeline "with necessary fittings and appliances"; that its chief engineer testified the aboveground valve in question was a necessary fitting and appliance; that it therefore needed no additional easement for the gate valve.

We cannot agree with this contention. Such a construction of the contract in question would ignore the plain language contained therein that the defendant "agrees to bury all pipelines so that they will not interfere with the cultivation of the land. . . ." If it should be considered that there is anything doubtful about the language of the contract, then we think there is applicable here the rule of interpretation of agreements, set forth in Civil Code Art. 1949, that "it may be explained by referring to other contracts or agreements made on the same subject between the same parties, before or after the agreement in question." Under this rule, we think the fact that in 1955 defendant pipeline company did not rely on its original right of way agreement, as being sufficient to authorize the installation of the aboveground valves, but actually

obtained from the plaintiff an additional easement for the valves, shows the intention and understanding of the parties. A further rule for the interpretation of agreements is Civil Code Article 1956 which states that "When the intention of the parties is doubtful, the construction put upon it, by the manner in which it has been executed by both, or by one with the express or implied assent of the other, furnishes a rule for its interpretation." Furthermore, Civil Code Article 753 states that "Servitudes which tend to affect the free use of property, in case of doubt as to their extent or the manner of using them, are always interpreted in favor of the owner of the property to be affected." Also applicable here is the rule that in case of doubt contracts are construed against the party who wrote them. We have no difficulty in concluding here that the right of way agreement of March 22, 1962 did not permit defendant to construct the aboveground gate valve installations in question.

Defendant's next contention is that plaintiff knowingly stood by without complaint or filing suit and allowed the defendant to construct the aboveground valves in question; that plaintiff is by such acquiescence now estopped from asking for an injunction to remove the valves and is relegated to an action for compensation and damages. The general principal of law, on which defendant relies, is well established in our jurisprudence as is shown by the cases it cites: St. Julien v. Morgan's L&T Railroad Co., 35 La. Ann. 924; Bourdier and Bellesien v. Morgan's L&T Railroad Co., 35 La. Ann. 947; Mitchell v. New Orleans & N.E. Co., 41 La. Ann. 363; Hart v. City of Baton Rouge, et al., 145 La. 173, 82 So. 79; Marcel J. Cousin v. H. B. Hornsby, et al., 87 So. 2d 157. In the recent case of A. K.

Roy, Inc. v. Board of Commissioners of Pontchartrain Levee District, 238 La. 926, 117 So.2d 60, the court stated this rule of law as follows:

> ". . . Where a property owner, with full knowledge that its property has been taken possession of by a public body for the purpose of constructing public works, stands by without resistance or complaint, as was the case here, considerations of public policy require that the owner shall not be permitted to reclaim its property but shall be restricted to a claim for compensation for the value of the property taken and for damages to adjacent land, if any, determined as of the date of the taking." (Citations omitted)

We do not think this rule of law is applicable under the facts of this case. The plaintiff here did not acquiesce in the construction of the aboveground valves, but, on the contrary, expressly refused to grant defendant this right. Defendant was aware of this refusal and could not have reasonably believed that plaintiff acquiesced. In the case of Reymond v. City of Baton Rouge, 145 La. 162, 82 So. 75, the court, in a similar situation, stated "these facts show the very opposite of acquiescence. They show that the city was fully and fairly advised that the owners of record were claiming ownership and were opposing a taking, and that therefore, when the city took possession of this strip of land and incurred expenses upon it, she did so with her eyes wide open."

Furthermore, we do not think the plaintiff had full knowledge that defendant was taking possession of his property for the purpose of constructing the aboveground

valves in question. Of course, plaintiff knew that defendant was going to enter upon his property for the purpose of constructing a pipeline, pursuant to the right of way which plaintiff had granted; but, as stated above, plaintiff did not know that the aboveground valves were going to be constructed until he visited the property a few days after construction had begun.

In its brief filed in this court, it appears defendant may be taking the position that plaintiff's failure to actually file a suit to enjoin construction of the valve, before construction commenced, created an estoppel. Although, as stated above, we do not think the evidence shows plaintiff had prior knowledge of defendant's intention to construct the valve, we believe that even if plaintiff had received such knowledge, he was not required to actually file a suit before construction began, in order to show lack of acquiescence on his part. As we understand the above cited cases, they do not go so far as to hold that a landowner is estopped, where he clearly makes know his protest and refusal of consent prior to construction of the public works. The cited cases do not hold that the landowner, in addition to expressly protesting or refusing to give his consent for the construction of the public works, must actually file a suit to enjoin their construction, or else thereafter be estopped from seeking their removal.

Plaintiff is entitled to an injunction ordering defendant to remove all of the aboveground valves, and other aboveground obstructions erected by defendant in 1962 upon plaintiff's land. Of course, defendant should be given a reasonable time, which we deem to be 90 days, within which to comply with such an order.

For the reasons assigned, the judgment appealed is reversed and set aside. It is now ordered, adjudged and decreed that there be judgment herein in favor of the plaintiff, Althimus Sigue, and against the defendant, Texas Gas Transmission Corporation, ordering defendant to remove all of the aboveground valves and other aboveground obstructions erected by defendant during the year 1962 upon the land of the plaintiff situated in Iberia Parish and described as follows:

> A tract of land containing 64 arpents, more or less, situated in Section 26, Township 13 South, Range 7 East, and bounded by land owned now or formerly on the North by Joe Labiche Estate, on the East by public road and Joe Labiche Estates, on the South by Dolze Guillot, and on the West by public road and Joe Labiche Estate; save and except one acre in the North-east corner sold to Albert Guillory on April 24, 1950, by act recorded in Book 191, page 196.

It is further ordered, adjudged and decreed that defendant comply with this injunction within a period of 90 days after this judgment becomes final. All costs in the lower court, as well as the costs of this appeal, are assessed against the defendant appellee.

REVERSED AND RENDERED

APPENDIX 2

No. 1126

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

TEXAS GAS TRANSMISSION CORPORATION
Plaintiff - Appellee
Vs.
ALTHIMUS SIGUE
Defendant - Appellant

Appeal from the Sixteenth Judicial District Court, Parish of Iberia; Honorable Rene H. Himel, District Judge, Presiding.

* * *

Before FRUGE, HOOD and CULPEPPER, Judges.
FRUGE, Judge.

This is an expropriation suit brought by a pipeline, Texas Gas Transmission Corporation, against a property owner, Althimus Sigue.

Defendant is the owner of a certain tract of land in Iberia Parish. In 1955 plaintiff obtained a pipeline servitude from the defendant with the provision that all pipelines would be buried beneath the surface of the land. Shortly thereafter, plaintiff obtained an additional servitude from the defendant for the purpose of constructing an aboveground gate valve with the right to enclose it by a fence. In 1962 plaintiff obtained another servitude from

defendant to construct a second pipeline parallel to the first; in this agreement the plaintiff agreed to bury the pipeline so that it would not interfere with the cultivation of the property. However, contrary to the agreement, plaintiff constructed an additional aboveground gate valve. Defendant then brought suit and this Court ordered the plaintiff to remove the second aboveground valve within ninety days. Sigue v. Texas Gas Transmission Corp., La. App. (3d Cir.), 154 So.2d 800.

Instead of removing the aboveground valve as ordered, plaintiff immediately instituted this suit to expropriate the land in question. The district court rendered a judgment for plaintiff and ordered it to pay defendant $53.00 for the property taken. From this judgment defendant appeals.

This suit was filed on October 22, 1963, and the order, petition and notice were personally served on defendant on October 24, 1963. After October 24, 1963, but more than ten days from that time, defendant filed certain motions, exceptions and finally filed an answer on November 18, 1963. The trial court refused to consider the motions, exceptions and answer because none of them had been filed within ten days after being served, as required by R.S. 19:6 and R.S. 19:7. The trial judge therefore held that the only issue that could be considered by the court was the amount of compensation due for the property and awarded defendant $53.00 for the property in question.

R.S. 19:6 and R.S. 7, which are part of the general expropriation statute, read as follows:

"§ 6. Service of answer on plaintiff

The defendant shall file his answer and serve a copy thereof on the plaintiff within ten days after the service upon the defendant of the notice of the time fixed for the trial. Every answer when filed shall have a certificate thereon showing the service thereof.

The answer shall be served personally or by mail on either the plaintiff or his attorney of record in the suit."

"§ 7. Laches by defendant forfeits defenses

Failure of the defendant in any such suit to file his answer timely or to serve a copy thereof on the plaintiff timely constitutes a waiver by the defendant of all defenses to the suit except claims for money as compensation for the property sought to be expropriated and claims for money as damages to other property."

"Since the public interest requires that expropriation proceedings be concluded promptly, without delay or filibustering, and the statute fixes a summary proceeding and a penalty for failure of defendant to answer promptly, such penalty must be strictly enforced.' City of Gretna v. Mitchell, La. App. (Orleans Cir.), 64 So.2d 873, 874. It has been consistently held that the time limits for filing an answer under expropriation statutes are mandatory and failure to answer or plead within the time limit is considered a forfeiture and waiver by defendant of all pleas other than quantum and damages. State v. Jackson Brewing Co., La. App. (4th Cir.), 146 So.2d 504 and cases cited therein.

In the present case the defendant was served on October 24, 1963. During the subsequent ten days defendant did nothing insofar as filing pleadings was concerned. After that time, under the clear wording of R.S. 19:6 and R.S. 19:7, defendant forfeited all pleas other than quantum and damages. The wording of the statute is clear and free from ambiguity. When the legislative intent is clearly expressed the courts must follow it. La. Civil Code Art. 13; State v. Jackson Brewing Co., supra.

Defendant contends that the expropriation statute in question has been impliedly repealed insofar as the time for filing pleadings is concerned. He argues that the time for filing set forth in the Code of Civil Procedure has superseded R.S. 19:6 and R.S. 19:7.

Article 1001 of the Code of Civil Procedure provides, in part, that "a defendant shall file his answer within fifteen days after service of citation upon him, *except as otherwise provided by law.*" (Emphasis added). We think that the wording of this statute clearly indicates that the legislature did not intend to repeal the provisions of R.S. 19.6 and R.S. 19:7. Article 1001 of the Code of Civil Procedure sets forth a general rule as to the time for filing answers. However, the article itself shows that there are to be exceptions to this general rule. Certainly the rules for filing answers in expropriation proceedings embodied in R.S. 19:6 and R.S. 19:7 come within the phrase "as otherwise provided by law" in Article 1001 of the Code of Civil Procedure.

Defendant takes the position that he was entitled to an extension of time to file his answer as a result of a

removal of this case to the federal district court and a remand by the federal court back to the state court. Counsel for defendant states that the case was removed to the United States District Court on November 5, 1963, well within the twenty days allowed by federal law for removal. Defendant's counsel further states that the case was remanded to the state court on November 13, 1963. He contends that the removal and remand had the effect of extending his time to answer in the state court to a reasonable time after the case had been remanded to the state court.

76 C.J.S. Removal of Causes § 312 provides, in part, as follows:

> "On remand the state court regains, if it has ever lost, complete jurisdiction of the cause, and it devolves on such court to proceed with it in the ordinary course, the order of remand being conclusive on the state court. On remand, the case resumes its position in the state court as originally filed therein, together with all pleadings, and, as far as jurisdiction over the parties is concerned, the case ordinarily returns to the state court in the same status as when the petition for removal was filed. It is incumbent on a defendant who removes a case to the federal court to see that his rights are protected in the state court in the event that the order of removal is determined by federal court to have been improper and the case is remanded; and, if he has not answered or demurred in the state court and consequently is in default at the time the case is remanded, it has been held that plaintiff's right to a default judgment is complete and attaches at the very moment the state court resumes jurisdiction after remand.

> The state court, after a remand, proceeds with the case according to its own views of the law and the facts, without regard to what views the federal court had on remand, and without regard to what views of the law were urged by any of the parties on the motion to remand."

We feel that the abovequoted sets forth principles which are pertinent to the case before us. The petition for removal was filed on November 5, 1963. As of that date ten days had already passed since service of notice on the defendant. Thus, as of November 5, 1963, defendant had waived his defenses except claims for quantum and damages under R.S. 19:6 and R.S. :7. When the federal court remanded the case the state court then had that same case before it that it had on November 5, 1963, a case in which the defendant had waived his defenses except claims for quantum and damages under R.S. 19:6 and R.S. 19:7. The removal and remand did not operate to revive defendant's opportunity to file an answer.

Defendant argues that the $53.00 awarded by the trial court was not just compensation for the servitude on defendant's property.

Plaintiff called two expert witnesess who testified as to the value of the property taken. Each stated that it was his opinion that the highest and best use of the property would be for residential purposes. Each valued the land at five cents per square foot. Applying this figure to the 2,121 square feet taken, each arrived at the conclusion that the value of the property taken would be $106.00 if it were free from encumbrances. However, the property was en-

cumbered with the prior servitudes; plaintiff's witnesses stated that this called for a diminishment of the value of the property taken by 50%. Therefore, plaintiff's witnesses arrived at a valuation of $53.00 for the property taken.

The defendant called an expert witness who testified that it was his opinion that the taking of the property surrounding the second valve was detrimental to all of defendant's property in the area and that his loss would be about $1750 per acre over an area comprising about eighteen acres.

Defendant contended that periodic blowing or releasing of gas from the valve would devaluate the property in the area. However, plaintiff's engineer testified that gas was released only three times for the purpose of construction and only for about one to two hours at a time. He testified that it is necessary to blow gas only when construction is in progress and not for maintenance purposes. He stated that the pipes are kept in first class condition and that the chance of an explosion from leakage is remote.

The trial judge correctly refused to award severance damages. It is to be remembered that the present serviture was obtained in order to construct a *second* aboveground valve, and that depreciation in value of the property taken for the servitude and also in the market value (severance damages) of the surrounding acreage has already occurred by reason of the erection of the *first* aboveground valve in connection with the servitude obtained for that purpose.

It is evident from the record that the trial judge was much more impressed with the evidence introduced by plaintiff concerning the appropriate compensation to be awarded. Our reading of the record leads us to the conclusion that the trial judge was not manifestly erroneous in his award of $53.00.

For the foregoing reasons the judgment of the district court is affirmed. Defendant is assessed costs of this appeal.

AFFIRMED.

APPENDIX 3

LOUISIANA CONSTITUTION

Article 1, Section 2:

> No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.

Article 7, Section 41:

> The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; . . .

LOUISIANA REVISED STATUTES OF 1950

Title 19

Art. 1:

> As used in this Part, the term "property" means immovable property, including servitudes.

Art. 2:

> Where a price cannot be agreed upon with the owner, any of the following may expropriate needed property:
>
> . . .
>
> (7) Any domestic or foreign corporation created for the piping and marketing of natural gas for the

purpose of supplying the public with natural gas; . . .

Art. 4:

All expropriation cases shall be tried before the court without a jury.

Art. 5:

On the institution of a suit for expropriation, the trial court shall issue an order fixing the time of the trial of the suit. The clerk of court shall thereupon certify a copy of the plaintiff's petition and of the order and issue a notice to the defendant of the time fixed for the trial.

The notice issued by the clerk of court, together with the certified copy of the plaintiff's petition and of the order, shall be served on the defendant at least twenty days before the time fixed for the trial of the suit.

Art. 6:

The defendant shall file his answer and serve a copy thereof on the plaintiff within ten days after the service upon the defendant of the notice of the time fixed for the trial. Every answer when filed shall have a certificate thereon showing the service thereof.

The answer shall be served personally or by mail on either the plaintiff or his attorney of record in the suit.

Art. 7:

Failure of the defendant in any such suit to file his answer timely or to serve a copy thereof on the plain-

tiff timely constitutes a waiver by the defendant of all defenses to the suit except claims for money as compensation for the property sought to be expropriated and claims for money as damages to other property.

LOUISIANA CODE OF CIVIL PROCEDURE OF 1960

Art. 851:

Three different modes of procedure are used in civil matters in the trial courts of this state: ordinary, summary, and executory.

The articles in this Book govern ordinary proceedings, which are to be used in the district courts in all cases, except as otherwise provided by law.

Summary and executory proceedings are regulated by the provisions of Book V.

Art. 921:

An exception is a means of defense, other than a denial or avoidance of the demand, used by the defendant, whether in the principal or an incidental action, to retard, dismiss, or defeat the demand brought against him.

Art. 922:

Three exceptions and no others shall be allowed: the declinatory exception, the dilatory exception, and the peremptory exception.

Art. 926:

The objections which may be raised through the dila-

tory exception include, but are not limited to, the following:

(1) Prematurity;
(2) Want of amicable demand;
(3) Unauthorized use of summary proceeding;
(4) Nonconformity of the petition with any of the requirements of Art. 891;
(5) Vagueness or ambiguity of the petition;
(6) Lack of procedural capacity;
(7) Improper cumulation of actions, including imprper joinder of parties;
(8) Nonjoinder of necessary party; and
(9) Discussion.

All objections which may be raised through the dilatory exception are waived unless pleaded therein.

Art. 927:

The objections which may be raised through the peremptory exception include, but are not limited to, the following:

(1) Prescription;
(2) Res judicata;
(3) Nonjoinder of an indispensable party;
(4) No cause of action; and
(5) No right of action, or no interest in the plaintiff to institute the suit.

The court cannot supply the objections of prescription and res judicata, which must be specially pleaded. —The nonjoinder of an indispensable party, or the fail-

ure to disclose a cause of action or a right or interest in the plaintiff to institute the suit, may be noticed by either the trial or appellate court of its own motion.

Art. 928:

The declinatory exception and the dilatory exception shall be pleaded prior to answer or judgment by default. When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.

The peremptory exception may be pleaded at any stage of the proceeding in the trial court prior to a submission of the case for a decision.

Art. 929:

The declinatory exception, the dilatory exception, and the peremptory exception when pleaded before answer, shall be tried and decided in advance of the trial of the case.

If the peremptory exception has been pleaded in the answer, or subsequently, but at or prior to the trial of the case, it shall be tried and disposed of on the trial. If the peremptory exception has been pleaded after the trial of the case, the court may rule thereon at any time unless the party against whom it has been pleaded desires and is entitled to introduce evidence thereon. In the latter event, the peremptory exception shall be tried specially.

Art. 1001:

A defendant shall file his answer within fifteen days after service of citation upon him, except as otherwise provided by law.

When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within ten days after the exception is overruled or referred to the merits, or ten days after service of the amended petition.

The court may grant additional time for answering.

Art. 1491:

Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may accompany the petition or be served after commencement of the action and without leave of court. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within fifteen days from service thereof unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within ten days after service of interrogatories a party may serve written objections thereto. Answers to interrogatories to which

objection is made shall be deferred until the objections are determined. . . .

Art. 1515:

If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Article 1491, after proper services of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

Art. 2163:

The appellate court may consider the peremptory exception filed for the first time in that court, if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.

If the ground for the peremptory exception pleaded in the appellate court is prescription, the plaintiff may demand that the case be remanded to the trial court for trial of the exception.

Art. 2591:

Summary proceedings are those which are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings.

Art. 2592:

Summary proceedings may be used for the trial or disposition of the following matters only:

. . .

(7) All other matters in which the law permits summary proceedings to be used.

Art. 2593:

A summary proceeding may be commenced by the filing of a contradictory motion or by a rule to show cause, except as otherwise provided by law.

Exceptions to a contradictory motion, rule to show cause, opposition, or petition in a summary proceeding shall be filed prior to the time assigned for, and shall be disposed of on, the trial. An answer is not required, except as otherwise provided by law.

REDACTORS' OFFICIAL SUMMARY

Article 2593 makes an important change in the procedural law by permitting the filing of exceptions and answers in all summary procedings.

Art. 2596.

The rules governing ordinary proceedings are applicable to summary proceedings, except as otherwise provided by law.

APPENDIX 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TEXAS GAS TRANSMISSION CORPORATION V. ALTHIMUS SIGUE	CIVIL ACTION NO._____
TEXAS GAS TRANSMISSION CORPORATION V. ALTHIMUS SIGUE	DOCKET NO. 23309 OF THE 16th JUDICIAL DISTRICT COURT, PARISH OF IBERIA, LOUISIANA

To The United States District Court for the Western District of Louisiana, Lafayette Division:

Petitioner, Althimus Sigue, respectfully avers:

1.

The above entitled action was commenced in the 16th Judicial District Court in and for the Parish of Iberia, State of Louisiana, and is now pending in that court; service was made on or after October 23, 1963; and a copy of plaintiff's petition setting forth the claim for relief upon which the action is based was first received by petitioner at that time.

2.

Copies of plaintiff's petition, annexed exhibit, the order of said State Court dated October 17, 1963, and the notice dated October 22, 1963 are annexed hereto and filed herewith, and nothing else has been served upon petitioner.

3.

The above entitled action is a civil action instituted by a plaintiff, a corporation not domiciled or having principal office in Louisiana against defendant, a citizen and resident of Louisiana, and the amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00; no change of citizenship of the parties has occurred since the commencement of this action.

4.

Plaintiff seeks by his suit to expropriate and have adjudged to itself certain land belonging to defendant, and to do so purportedly by procedure set out in Louisiana statutes.

5.

As shown by the averments of Paragraphs 8 and 9 of plaintiff's original petition, plaintiff first *appropriated* the property in question and placed costly installations thereon, which resulted in prior litigation between the parties.

6.

In said prior litigation the Court of Appeal for the Third Circuit, State of Louisiana, on June 18, 1963, handed down a written decision, copy of which is annexed hereto and made part hereof; rehearing was refused by that court on July 9, 1963; on October 1, 1963 the Louisiana Supreme Court refused to issue writ, as shown by copy of ruling of that court annexed hereto and made part hereof; and the aforesaid judgment of said Court of Appeal is final.

7.

Defendant (petitioner herein) avers on information and belief that the cost of such installation on his property exceeded $10,000.00, that the cost of complying with aforesaid final judgment would likewise exceed said sum; and there have been and will be extensive damages to his property described in plaintiff's petition, as well as diminution of value of his land not sought now to be expropriated, that he has been and is being illegally deprived of the use and enjoyment of his property by plaintiff's acts and actions, being forced to employ counsel and engage in unwanted litigation and incur expenses in the hire of experts and otherwise, and has suffered and will continue to suffer great anxiety and emotional upset, and the amount in controversy as regards these losses and damages likewise has a reasonable value, exclusive of interest and costs, in excess of $10,000.00.

8.

Aforesaid final judgment is a property right belonging to defendant, and plaintiff is by this suit seeking to deprive defendant of such property by acquiring the real property without complying with the aforesaid final judgment.

9.

Such procedure would seek to deprive defendant of his property without due process, and is thereby violative of the due process provisions of the United States Constitution, and of the Louisiana Constitution.

10.

Defendant's rights under aforesaid final judgment are civil rights guaranteed him under the Constitutions and laws of the United States and Louisiana, and plaintiff's suit, purporting to be one authorized by Louisiana statute, is an attempt to deprive defendant of his property and other rights under color of law, and by actions of a plaintiff who allegedly has been delegated the power of a State government to expropriate private property.

11.

Plaintiff likewise claims in its petition to derive its power to expropriate by grant of the Federal Power Commission, an agency of the United States having delegated authority.

12.

Louisiana Revised Statutes 19:4 provides:

> All expropriation cases shall be tried before the court without a jury.

13.

Since plaintiff's action purports to be instituted under Louisiana law, including aforesaid statute, further proceedings in the Louisiana court would deprive defendant of the right to trial by jury, contrary to Louisiana Constitution and law, and in direct violation of the United States Constitution, and in particular, Amendments 5, 7 and 14 thereof.

14.

Defendant desires and is entitled to trial by jury, but avers that unless this case is removed and all further proceedings conducted in this court he will be deprived of his constitutional rights, and all under color of Louisiana law.

15.

This court has jurisdiction by virtue of:

a. Diversity of citizenship of the parties and the amount in controversy.

b. The Federal statutory guarantee that defendant's civil rights may not be taken or destroyed under color of law by action of an agency holding power delegated by the State of Louisiana, and granted by an agency of the United States.

c. The Federal constitutional guarantee that defendant's property may not be taken except by due process of law.

d. The Federal constitutional guarantee of trial by jury, and the contrary and unconstitutional provisions of the Louisiana law under which this action purports to be brought

e. The fact that plaintiff's suit is an attempt to destroy defendant's property rights to and under the judgment of the Louisiana Court of Appeal which is now final and is res judicata as ot the controversy between the parties.

16.

This petition is accompanied by a bond conditioned as required by law.

WHEREFORE, petitioner prays that this action be removed, that he be permitted to file pleadings, and that any trial be by jury.

And for all general and equitable relief.

October 28, 1963.

SIMON & TRICE
Attorneys at Law
1408 Pinhook Road
Post Office Box 2241
Lafayette, Louisiana

By_____
Phil Trice

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Phil Trice being duly sworn did depose and say that he is the attorney for defendant in the above petition for removal; that he has prepared and read the same and that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

_____
Phil Trice

SWORN TO AND SUBSCRIBED before me this 28th day of October, 1963.

_____
Notary Public